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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LOS ANGELES COUNTY REGIONAL PARK AND OPEN SPACE DISTRICT, Plaintiff and Appellant, v. CITY OF WHITTIER et al., Defendants and Respondents.	B257541 (Los Angeles County Super. Ct. Nos. BS136211, BS138796)

APPEAL from an order of the Superior Court of Los Angeles. James C. Chalfant, Judge. Affirmed.

Mark J. Saladino, County Counsel, and Scott Kuhn, Deputy County Counsel; Glaser Weil Fink Howard Avchen & Shapiro, Patricia L. Glaser, and Sean Riley for Plaintiff and Appellant Los Angeles County Regional Park and Open Space District.

Law Offices of Woosley & Porter, Jordan T. Porter, and Eric A. Woosley for Defendants and Respondents Matrix Oil Corporation and Clayton Williams Energy, Inc.

Richards, Watson & Gershon, James L. Markman, Ginetta L. Giovinco and Stephen D. Lee for Defendants and Respondents City of Whittier and City Council of City of Whittier.

Los Angeles County Regional Park and Open Space District (the District) appeals from an order denying its motion for an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5.[1] We affirm.

FACTUAL AND PROCEDURAL HISTORY

Los Angeles County voters approved Proposition A in 1992. Among other purposes, the initiative authorized property assessments and bonds to fund "'grants to public agencies for the acquisition, development, improvement, rehabilitation, or restoration of real property for parks and park safety, . . . recreation, wildlife habitat or natural lands . . . .'" (*Mountains Recreation and Conservation Authority v. City of Whittier* (June 2, 2015, B253545, p. 4) [nonpub. opn.] (*Mountains Recreation I*).) The initiative created the District, which is charged with the duty to "'take all actions necessary and desirable to carry out the purposes of [Proposition A].'" (*Ibid*.)

In November 1993, the District and the City of Whittier (Whittier) entered into a "Project Agreement" to implement a grant of Proposition A funds. Under the Project Agreement, the District granted Whittier $9.3 million to acquire certain land to "'preserve portions of the last remaining chaparral, native oak woodlands and coastal sage scrub ecosystems within eastern Los Angeles County.'" (*Mountains Recreation I*, *supra*, at p. 5.) Among other terms, Whittier agreed to "'submit for prior District review and approval any and all existing or proposed operating agreements, leases, concession agreements, management contracts or similar arrangements with non-governmental entities . . . as they relate to the project or the project site for a period of twenty (20) years from the date of this Agreement.'" (*Ibid*.) The Project Agreement also required Whittier, upon sale or other disposal of less than the entire interest in the property, to reimburse the District "'an amount equal to the greater of: 1) an amount equal to the proceeds; or 2) the fair market value.'" (*Id*. at p. 13.) The term of the Project Agreement "'is from the date of execution by both parties through June 30, 2015.'" (*Id.* at p. 6.)

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[1] All statutory references are to the Code of Civil Procedure.

In December 1995, Whittier used its Proposition A grant to acquire 1280 acres of land (the property), which became part of the Puente Hills Landfill Native Habitat Preserve.

On October 28, 2008, Whittier entered into a lease (the Lease) with Matrix Oil Corporation and Clayton Williams Energy, Inc. (Matrix). The Lease allowed Matrix to explore, drill, and operate approximately seven acres of the property for the production of oil and gas (the Project). The Lease permitted Matrix to construct and operate pipelines, power lines, tanks, buildings, and other structures necessary and proper for its operations. It also allowed for the relocation of existing roads and the building of new ones to accommodate the Project. Whittier would receive a fixed rent per acre plus royalties on the sale of oil and gas produced from the property.

Upon the completion of an environmental impact report in November 2011, Whittier issued a conditional use permit for the Project.

Whittier did not obtain the District's approval of the Lease.

Mountains Recreation and Conservation Authority (MRCA) commenced the underlying litigation when it filed a complaint and petition for writ of mandate in February 2012 against Whittier and the District.[2] The District filed a cross-complaint and petition for writ of mandate alleging that Whittier had breached the Project Agreement, violated Proposition A and the public trust doctrine, and failed to comply with the California Environmental Quality Act (CEQA). It sought specific performance of the Project Agreement, injunctive relief, and declaratory relief.

After a trial in June 2013, the court ruled in favor of the District on its contract-based claims. The court ruled against the District on its Proposition A and public trust claims on the ground that they were barred by statutes of limitations. The court rejected the District's CEQA claim on its merits. In the final, amended judgment, the court ordered specific performance of the Project Agreement's provision that Whittier obtain the District's consent before entering into any lease or other agreement that changes the

[2] Prior to the entry of judgment, MRCA settled its claims against Whittier and Matrix, and dismissed its petition and complaint.

use, or disposes, of any portion of the property. It also enjoined Whittier and Matrix from activity on the property pursuant to the Project until the District approves of the Project or July 1, 2015, whichever occurs first. The court also declared "'that during the term of the Project Agreement, which expires on June 30, 2015, Whittier is not entitled to spend rental income, royalties or other proceeds from the Lease in a manner that violates the Project Agreement.'" (*Mountains Recreation I, supra*, at p. 10.) The District appealed.

In an unpublished decision filed in June 2015, we agreed with the trial court that Whittier breached the Project Agreement by entering into the Lease without the District's consent. (*Mountains Recreation I, supra*, at p. 3.) We disagreed, however, with the court's remedy, and modified the judgment by omitting the expiration date for the injunction. We explained that "the termination date of the agreement is [not] relevant to the proper duration of injunctive and declaratory relief for a breach occurring during the term of the agreement. Once a breach occurred, the District was entitled to appropriate relief from that breach. The expiration of the Project Agreement itself did not eliminate the prior breach, which was entering into the unapproved Lease." (*Id.* at p. 14.) We also rejected the District's CEQA claim and declined to address the merits of its Proposition A and the public trust claims as unnecessary. As modified, we affirmed the judgment.

In January 2014, while the appeal from the judgment was pending, the District moved for an award of attorneys' fees in the amount of $1,105,651.20 pursuant to section 1021.5. After a hearing, the court denied the motion. This appealed followed.

DISCUSSION

The enactment of section 1021.5 codified the private attorney general doctrine for recovering attorneys' fees. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933 (*Woodland Hills*).)[3] To obtain an award of fees under the statute,

[3] Prior to the enactment of section 1021.5, trial courts could award attorneys' fees to a litigant under the private attorney general doctrine if the court determined that the litigation "resulted in the vindication of a strong or societally important public policy,

the moving party must establish that it was "a successful party" and: (1) the litigation "resulted in the enforcement of an important right affecting the public interest"; (2) the result conferred "a significant benefit . . . on the general public or a large class of persons"; and (3) "the necessity and financial burden of . . . enforcement by one public entity against another public entity[] are such as to make the award appropriate." (§ 1021.5; see *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214.) Because the statutory criteria are stated in the conjunctive, each must be met to justify a fee award. (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 429.)

Here, the trial court found that the District was a successful party for purposes of section 1021.5 and "assume[d] that the District's success conferred a significant benefit on a large class of persons." The court found, however, that the District did not establish: (1) the "enforcement of an important public right affecting the public interest"; or (2) "the element of necessity and financial burden." The court therefore denied the motion.

To "determine whether the right vindicated in a particular case is sufficiently 'important' to justify a private attorney general fee award" under section 1021.5, there is "no concrete standard or test." (*Woodland Hills, supra,* 23 Cal.3d at p. 935.) Instead, "the trial court, utilizing its traditional equitable discretion . . . , must realistically assess the litigation and determine, from a practical perspective, whether or not the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory." (*Id.* at p. 938; see also *Vasquez v. State of California* (2008) 45 Cal.4th 243, 251.) "The trial court's decision on this issue should be reversed only if there has been a prejudicial abuse of discretion. '"'To be entitled to relief on appeal . . . it must clearly appear that the injury resulting from such a wrong is

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that the necessary costs of securing this result transcend the individual plaintiff's pecuniary interest to an extent requiring subsidization, and that a substantial number of persons stand to benefit from the decision." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 45.) The doctrine rested "upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." (*Woodland Hills, supra,* 23 Cal.3d at p. 933.)

sufficiently grave to amount to a manifest miscarriage of justice. . . .'"' [Citation.]" (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1291.)

Although the District sought relief based upon alleged violations of Proposition A, the public trust doctrine, and CEQA, the only right the District vindicated was a contractual right under the Project Agreement with Whittier. The District has not referred us to any case in which attorneys' fees were awarded under section 1021.5 for vindicating or enforcing a party's contractual rights. It does refer us to the *Woodland Hills* case, in which the plaintiff successfully sued a city to enforce certain provisions of the Subdivision Map Act (Bus. & Prof. Code, § 11500 et seq.). (*Woodland Hills, supra,* 23 Cal.3d at pp. 926-927.) Although that case involved the enforcement of *statutory* rights, the court noted that section 1021.5 "explicitly authorizes such award 'in any action which has resulted in the enforcement of an important right affecting the public interest' . . . regardless of its source—constitutional, statutory or other." (*Woodland Hills, supra*, 23 Cal.3d at p. 925, italics omitted.) "'[O]ther'" sources of important rights, the District contends, should include *contracts*.

The District relies on *In re Head* (1986) 42 Cal.3d 223, *Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382 (*Robinson*), and *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668 (*Folsom*). These cases do not support the District's argument. In *Head,* prison inmates used a habeas corpus proceeding to successfully challenge the Department of Corrections' implementation of a statutorily authorized work furlough program as constitutionally deficient. (*In re Head, supra,* at pp. 225-226, citing Pen. Code, §§ 6260-6265.) The case did not involve the enforcement of any contract right.

In *Robinson,* the plaintiff obtained mandamus relief under the Public Safety Officers Procedural Bill of Rights Act (POBRA) and damages for breach of an employment contract. (*Robinson, supra,* 202 Cal.App.4th at p. 388.) Although plaintiff recovered on his contract claim, the court's award of attorneys' fees under section 1021.5 was based on "the importance of the rights and protections set forth in POBRA." (*Id.* at p. 395.) It was not based on the enforcement of his employment contract.

In *Folsom*, the plaintiffs sued various public entities for violating the Transportation Development Act of 1971 (the TDA) by failing to allocate funds for public transportation. (*Folsom*, *supra*, 32 Cal.3d at p. 673.) The parties eventually settled the action with the public entities agreeing to establish new public transit systems. (*Id.* at p. 675.) The trial court thereafter awarded plaintiffs their attorneys' fees under section 1021.5. (*Id.* at pp. 675-676.) In the Supreme Court, the "central question" was whether the settlement agreement operated as a merger and bar of the statutory claims, thereby depriving the court of jurisdiction to award fees. (*Id.* at p. 671.) The court held that the agreement did not preclude an award of fees, and upheld the award because the plaintiffs vindicated the legislature's intent in enacting the TDA. (*Id.* at p. 684, citing Pub. Util. Code, § 99220, subd. (c).) Thus, although the plaintiffs' victory was achieved via settlement of their lawsuit, the important right they vindicated was a *statutory* right; not, as the District suggests, a right arising from the settlement agreement.

Even if enforcement of a contract right can support an award of attorneys' fees under section 1021.5 in some cases, it does not here. Realistically assessed, the practical impact of the District's litigation is remarkably limited. First, the relief obtained by the District applies solely to activity under a particular lease that violated a particular Project Agreement between the District and one grant recipient. Neither we nor the trial court construed or applied Proposition A or the public trust doctrine, or addressed any agreement the District may have entered into with any other grant recipient. The judgment, as modified in *Mountains Recreation I*, is binding on only the parties identified in the judgment and impacts only activity under the Lease.

Second, because *Mountains Recreation I* is an unpublished opinion, it established no precedent or legal principle applicable to anyone other than the parties to this litigation. (Cal. Rules of Court, rule 8.1115; see *Adoption of Joshua S.* (2008) 42 Cal.4th 945, 958 ["whether litigation generates important appellate precedent is a factor courts may consider in determining whether the litigation can be said to enforce an important right affecting the public interest"]; *Serrano v. Stefan Merli Plastering Co., Inc.* (2011) 52 Cal.4th 1018, 1029 [same].)

The District argues that this litigation vindicated public policies favoring the preservation of parks and open spaces reflected in the state Constitution, state statutes that authorized the creation of open space districts, and Proposition A. (See, e.g., Cal. Const., art. XIII, § 8; Gov. Code, § 65562, subd. (a); Pub. Resources Code § 5539.9, subds. (j) & (k); Prop. A, as approved by voters, Gen. Elec. (Nov. 3, 1992), §§ 3, 4, 6c & 6d.) We disagree. As the trial court acknowledged, the litigation did involve a "public interest"; however, neither the trial court nor we interpreted, construed, referred to, relied upon, or applied any of the cited constitutional provisions or statutes. The litigation resulted in the enforcement of the District's contractual right to prior review and approval of agreements concerning the property and, from a practical perspective, had the impact of stopping activity permitted under one lease. A realistic assessment of this impact compels the conclusion that the litigation did not result in the enforcement of an important right affecting the public interest for purposes of section 1021.5. Because the District failed to establish this element of section 1021.5, we need not address other elements.

DISPOSITION

The order denying the District's motion for attorneys' fees is affirmed. Whittier shall recover its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.